

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34218

STATE OF IDAHO,)	2008 Unpublished Opinion No. 500
)	
Plaintiff-Respondent,)	Filed: June 9, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
ELIAS LIONEL SEDANO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Joel D. Horton, District Judge.

Order relinquishing jurisdiction and ordering previously imposed sentence into execution, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Nicole Owens, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Elias Lionel Sedano was charged with two counts of lewd conduct with a minor under sixteen and pursuant to a plea agreement, pled guilty to the amended charge of statutory rape, I.C. § 18-6101(1). The district court sentenced Sedano to a unified term of fifteen years, with two years determinate and retained jurisdiction. After Sedano completed his rider, the district court relinquished jurisdiction and ordered the underlying sentence into execution. Sedano filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Sedano appeals, contending that the district court abused its discretion by relinquishing jurisdiction and imposing sentence and by denying his Rule 35 motion.

The decision whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Lee*, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990). It follows that a decision to relinquish jurisdiction will not be

disturbed on appeal except for an abuse of discretion. *State v. Chapman*, 120 Idaho 466, 816 P.2d 1023 (Ct. App. 1991). The standards governing the trial court's decision and our review were explained in *State v. Merwin*, 131 Idaho 642, 962 P.2d 1026 (1998).

“Refusal to retain jurisdiction will not be deemed a ‘clear abuse of discretion’ if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under [the statute].” While a Review Committee report may influence a court's decision to retain jurisdiction, “it is purely advisory and is in no way binding upon the court.” Idaho Code § 19-2521 sets out the criteria a court must consider when deciding whether to grant probation or impose imprisonment. . . . “A decision to deny probation will not be held to represent an abuse of discretion if the decision is consistent with [the § 19-2521] standards.”

Id. at 648, 962 P.2d at 1032 (citations omitted).

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

We conclude that the district court did not abuse its discretion in relinquishing jurisdiction and in ordering into execution the previously imposed sentence of fifteen years, with two years determinate, for statutory rape. Therefore, the district court's order relinquishing jurisdiction and imposing sentence is affirmed, as is the denial of Sedano's Rule 35 motion for reduction of sentence.